Single Bench

(3) 9/1/002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH

W.P. NO. 4527 /2004

Petitioner : Gayatri Devi Gupta
W/o Naresh Gupta, Aged about 35 years, R/o Sirmor Square, Near P.K. School, Gayatri Provision Store, Riwa (M.P.).

P.R. No. 4506/04
Presented by Shri Ajay Sharma
dated 9.7.04

Vs

Respondents : 1. Rajendra Kumar Gupta alias Munna, S/o Sadan Lal Gupta, Aged about 40 years, R/o Kududand near water tank, Bilaspur (C.G.).

2. Bank of Maharashtra through Branch Manager Masanganj, Bilaspur.

3. Central Bank of India through Branch Manager Main branch Near Manohar Talkies, Bilaspur (C.G.).

4. The Allahabad Bank through Branch Manager near bus stand Bilaspur (C.G.).

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 4527/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

23-12-2004

On a mention being made, the case is taken up for hearing.

Shri Gautam Bhaduri, counsel for the petitioner.

By this writ petition filed under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 27-10-2004 passed by the learned 3rd Civil Judge, Class-I whereby learned Civil Judge has rejected the objections raised by the petitioner herein that without obtaining the probate, respondent No.1 herein is not entitled for the succession certificate based on the Will alleged to have been executed in his favour.

I have heard learned counsel for the petitioner on admission and perused the impugned order. Learned Civil Judge while placing reliance on the judgment of the High Court of Madhya Pradesh in the matter of **Bhaiyalal V. Kashi Bai and another** reported in **2001 (1) M.P.L.J. 429** rejected the objections raised by the petitioner herein on the ground that since property in question which has been bequeathed by the Will in question is not situated in Madras, Bombay or Calcutta, therefore, provisions of Section 213 of the Indian Succession Act, 1925 are not applicable in this case.

Learned counsel for the petitioner submitted that in view of the judgment of Constitution Bench of the Hon'ble Apex Court in the

(37)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

matter of **Bhau Ram V. Baij Nath Singh and others** reported in **AIR 1962 Supreme Court 1476** impugned order is contrary to the law laid down by the Hon'ble Apex Court.

In this connection, if we look into the provisions of Sections 57-(a) and 213 of the Indian Succession Act, 1925, conjoint reading of both the Sections makes it clear that the provision applies to all the Wills made within the territories of Government of Bengal or Lieutenant Governor of Bengal or within the local limits of the Ordinary Original Civil Jurisdiction of the High Courts of judicature at Madras and Bombay. If a Will is executed by a Hindu, Buddhist, Sikh or Jaina within such territories or with respect to property situated in those territories it is necessary to obtain the probate and Civil Court has no jurisdiction to adjudicate upon the factum and validity of the Will. Further reading of Sub-section (2) of Section 213 makes it clear that the section applies with respect to Wills which are of the class specified in clause (b) of section 57. Therefore, the bar created by sub-section (1) of section 213 that no right as executor or legatee can be established in any Court of Justice, unless a court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed applies only to those categories of persons as mentioned in

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मामला क्रमांक.....**सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

clause (a) and properties mentioned in clause (b) of section 57 of the Act.

Therefore, the succession certificate on the basis of the Will has been sought regarding the property situated at Bilaspur, as such in view of clause (a) of Section 57 and sub-section (2) of Section 213 of the Indian Succession Act, it is necessary for respondent No.1 herein to obtain the probate before claiming right based on the Will.

Counsel for the petitioner further submitted that learned Civil Judge imposed cost of Rs.3,000/- which is very exorbitant and same has been imposed without any justification.

Having heard learned counsel for the petitioner, request made by learned counsel for the petitioner appears to be just and reasonable, therefore, looking to the circumstances, cost is reduced from Rs.3,000/- to Rs.500/-.

With the above observation, the petition is dismissed.

Sd/-
L.C. Bhadoo
Judge

19/12/04